

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

LASALLE BANK, N.A.,	:	APPEAL NO. C-090444
Plaintiff-Appellee,	:	TRIAL NO. A-0709420
vs.	:	
CARL F. TUKE, JR.,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Carl F. Tuke presents on appeal a single assignment of error challenging the decision of the Hamilton County Court of Common Pleas granting to plaintiff-appellee LaSalle Bank, N.A., an order charging Tuke's membership interest in Paxton Avenue Properties, LLC, an Ohio limited-liability company, pursuant to R.C. 1705.19.

The record reveals that LaSalle Bank obtained a multimillion dollar cognovit judgment against Tuke, which was ultimately affirmed by this court. Following the entry of the judgment, LaSalle Bank filed a motion for an order charging Tuke's membership interest in Paxton Avenue Properties, LLC. Tuke opposed the motion,

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

arguing that his membership interest had been previously pledged to another lender, United Community Bank located in Lawrenceburg, Indiana, to secure the repayment of his indebtedness on two Indiana judgments, and that the actual physical certificate of his membership in Paxton Avenue Properties, LLC, was in the possession of United Community Bank as security for his pledge.

To support his argument, Tuke filed the affidavit of E.G. McLaughlin, the Executive Vice President/Chief Operating Officer of United Community Bank. The affidavit provided that Tuke had entered into a standby pledge of his interests to United Community Bank. The date of the pledge was not given, nor was a copy of the pledge agreement attached to the affidavit. The affidavit further provided that, pursuant to the standby pledge, Tuke had granted a continuing security interest to United Community Bank as collateral for repayment of his indebtedness on the two Indiana judgments. Certified copies of the two judgments were attached to the affidavit.

Following a hearing, the trial court granted LaSalle Bank's motion for a charging order against Tuke's membership interest in Paxton Avenue Properties, LLC, for the amount of the bank's cognovit judgment plus interest, attorney fees, late fees, and a per diem. In its order, the trial court stated that it was not reaching the issue of the validity, priority, or enforceability of Tuke's alleged pledge of his interests to United Community Bank as recited in McLaughlin's affidavit.

On appeal, Tuke argues that the trial court erred in granting a "conditional" charging order under R.C. 1705.19. Tuke makes a number of arguments. First, he argues that because he had already pledged his membership interest in Paxton Avenue Properties, LLC, to United Community Bank to secure repayment of the two

Indiana judgments, there was no interest available for LaSalle Bank to charge under R.C. 1705.19. But Tuke's argument confuses the creation of a charging order with the determination of its priority as a lien against other security interests. R.C. 1705.19 sets forth the rights of a judgment creditor to charge or place a lien on the membership of a judgment debtor. It does not speak to or address the priority of the charging order in relation to other interests that may already exist.

Tuke next argues that pursuant to R.C. 1709.18 his membership interest in Paxton Properties LLC, was no longer subject to a charging order because he had already assigned it to the Union Community Bank. But Tuke's argument is belied by the affidavit of E.G. McLaughlin. The affidavit affirmatively states that Tuke still owns his membership interest, and that no assignment has taken place. Rather, Tuke merely pledged the interest as security for a debt. In the absence of any evidence of an assignment of Tuke's interest to a third party, R.C. 1709.18 and the accompanying authority cited by Tuke are inapplicable. Furthermore, any perfection of Tuke's pledge, even if valid, would have only affected Union Community Bank's lien against other creditors. It would not have affected Tuke's ownership of the interest, nor would it have constituted an actual transfer of Tuke's interest to the bank.

Finally, Tuke argues that because the trial court failed to address the priority of its charging order against other interests, including that of Union Community Bank, the entry is "provisional, hypothetical, advisory and useless." But a charging order is in the nature of lien on the judgment debtor's economic interest. R.C. 1709.19 provides that, once granted, a charging order gives the judgment creditor the rights of an assignee of the membership interest. If the assignment of the

membership interest is claimed to be subject to a prior valid claim of another creditor, then that is a matter of priority between those creditors that is to be determined at a later proceeding when all the relevant parties are properly before the court. Union Community Bank was not a party to the proceedings in the trial court, so it would have been improper for the trial court to make any determination about the priority of LaSalle Bank in relation to Union Community Bank in this case. Having therefore found none of Tuke's arguments meritorious, we overrule his sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 31, 2010

per order of the Court _____.
Presiding Judge